

DAVIS, GRAHAM & STUBBS

A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW

SDMS Document ID



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JOHN R. JACUS
(303) 544-4472
john.jacus@dgsllaw.comSUITE 4700
370 SEVENTEENTH STREET
DENVER, COLORADO 80202MAILING ADDRESS
POST OFFICE BOX 185
DENVER, COLORADO 80201-0185TELEPHONE 303-892-9400 TELEX 413726 DGS DVR UD
FACSIMILE 303-893-1379 CABLE DAVGRAM, DENVERVIEWPOINT ON THE PARKWAY
4440 ARAPAHOE AVENUE
SUITE 140
BOULDER, COLORADO 80303
TELEPHONE 303-544-5900
FACSIMILE 303-544-5997

August 31, 2000

Ms. Sharon L. Kercher, Director
Technical Enforcement Program
Office of Enforcement, Compliance &
Environmental Justice
U.S. EPA Region VIII
999 18th Street, Suite 500
Denver, CO 80202-2466*Via Hand Delivery*

Re: Comments of Hecla Mining Company on Draft Consent Order

Dear Ms Kercher:

I am writing on behalf of Hecla Mining Company ("Hecla") in response to your draft RCRA § 7003 Order on Consent ("Consent Order") which we received on June 26, 2000 under cover of your letter dated June 22, 2000. Hecla appreciates your preparation of the draft Consent Order and this opportunity to comment on it. This letter sets forth Hecla's general and specific comments of a more significant nature. Less significant suggested changes are not addressed in this letter, but are identified in the enclosed, "redline" version of the draft Consent Order.

General Comments

1. The draft Consent Order seeks to have Hecla commit, without recourse of any kind, to implement whatever measures EPA may choose, in its sole discretion, even the most stringent hazardous waste clean up requirements. As you know, Hecla has clearly disputed that any hazardous wastes are contained within the subject Impoundment, and Hecla will not commit to a scope of work or a consent order which deprives it of the opportunity to defend its position on that issue. See Hecla's January 20, 2000 letter responding to EPA's RCRA § 3013 Order, Docket No. RCRA-8-99-06. A number of specific comments set forth below also relate to this general comment.

2. In keeping with Hecla's prior representations to EPA that it does desire to fully and finally reclaim the subject Impoundment in a manner consistent with the Beville status of wastes within it, as well as standard industry practice, Hecla remains interested in the execution of an appropriate consent order which accomplishes the investigation of the site and characterization of solid wastes and their constituents at the site. Hecla is also willing to prepare and submit Closure Work Plan for the site, but it is not prepared to commit to its implementation at this time. EPA's

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draft Consent Order and recently obtained comments on the initial sampling and analysis plans submitted by Hecla clearly reveals an EPA approach to reclamation of the subject Impoundment as though it were an unpermitted RCRA TSD facility. In an attempt to avoid unnecessary conflict with EPA, at least until the Site is properly characterized, Hecla's revised draft Consent Order excludes from the scope of "Work" the implementation of the Closure Work Plan, and only makes such implementation subject to possible separate agreement by Hecla and EPA after submission of and comment upon such a plan. Alternatively, if EPA and Hecla could agree on the terms of a Closure Work Plan prior to executing a Consent Order, i.e., after characterization, Hecla could agree to implement such a plan in the Order.

3. To the extent that EPA will not agree to a narrower scope of work in a consent order under RCRA § 7003, Hecla intends to implement those portions of the EPA-required plan on which Hecla can agree under the existing RCRA § 3013 Order.

Specific Comments

1. In the jurisdiction section, Hecla cannot agree to waive its right to contest the validity of the Order or to acknowledge any past or present handling, storage, etc., of hazardous waste, especially given its general comments noted above. To the extent EPA attempts to require corrective measures far more stringent than those required for reclamation of mineral beneficiation waste, Hecla will continue to reserve its right to contest the validity of the existing unilateral order, or any consent order proposed to replace it, due to the absence of RCRA hazardous waste.

2. Hecla objects to language at paragraphs 37 through 41 of EPA's draft Consent Order which appears to be cumulative and argumentative on the issue of whether Hecla was required to further characterize waste generated by St. George Mining Company ("SGMC") that was later consolidated for disposal in the Impoundment, and therefore has deleted portions of it.

3. Likewise, in paragraphs 43 and 44 of EPA's proposed Consent Order, language concerning what Hecla assertedly did not do is unnecessary to the conduct of work under the Consent Order, and will not be agreed to by Hecla. If EPA wants to make a hazardous waste case against Hecla, it will have to develop it on its own, and Hecla will not waive its defenses or consent to the elements of liability, especially given the strong evidence of record that materials in the Impoundment are non-hazardous solid wastes under the Bevill Amendment to RCRA. Accordingly, such passages have also been deleted on the enclosed redline draft.

4. With respect to paragraph 50 of the proposed draft Consent Order, this language should be revised to indicate that "EPA has concluded that the Respondent has managed solid waste at the Facility . . ." Hecla does not and need not join in that conclusion for purposes of the orders execution.

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5. Because Hecla is unwilling to implement a Closure Work Plan without understanding and agreeing in advance what will be required of it, paragraph 68 of EPA's proposed draft Consent Order has been deleted. Also, paragraph 70 of the proposed draft has been substantially revised to provide that, after submission of a Closure Work Plan and EPA approval thereof, Respondent and EPA shall meet and confer concerning whether Respondent will agree to implement all or a portion of that approved plan, either as an item of additional work or as a modification of the Consent Order. Additionally, proposed paragraph 76 has been revised to exclude the Clean Up or Closure Work Plan from the general implementation requirements applicable to other plans, reports or submittals by Respondent to EPA.

6. A Dispute Resolution section has been added at paragraphs 69-73.

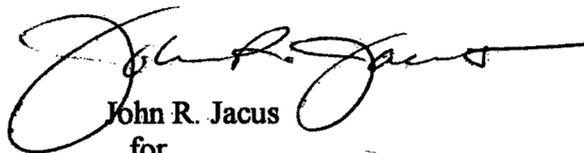
7. Hecla has added new paragraph 95 to expressly reserve its rights and defenses under the Consent Order, consistent with its other general and specific comments noted herein.

8. Hecla also objects to the size of per day stipulated penalties proposed in the draft Consent Order at paragraph 113, and to EPA having sole discretion as to whether the work has been satisfactorily completed and whether Hecla has made a good faith effort to implement the Work.

As you know, we are also still finalizing our response to EPA comments on the sampling and analysis plan submitted to EPA on January 20, 2000. We will have those responses to your comments back to you on or before September 18, 2000.

Please contact this office when you have had an opportunity to review this letter and the enclosed redline of EPA's proposed draft Consent Order. We believe a conference call or meeting may be appropriate to review possible next steps with EPA concerning this matter.

Respectfully submitted,



John R. Jacus
for
Davis, Graham & Stubbs LLP
Attorneys for Hecla Mining Company

Enclosure

cc: John N. Galbavy, Esq. - Hecla
Mr. Gary Nelson - Hecla
Lauren Buehler, Esq. - EPA
Ms. Linda Jacobson - EPA

JRJ/sas

→ OMG

1pm → 1st wk Oct. Conf. call-

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FILE NO. ~~2375~~

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SEP 01 2000
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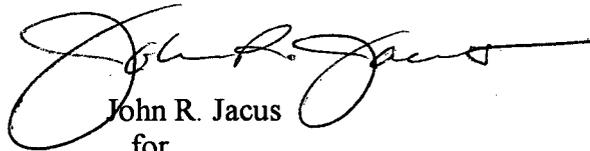
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